



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 080023

Petitioners, Man Yeung and Mui Shuet, applied to the Building Commissioner for permission to install an additional driveway and new parking for their property at 47-49 Harrison Street. The application was denied and an appeal was taken to this Board.

On 25 June 2008, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 21 August 2008, at 7:00 p.m. in Hunniman Hall, Main Library as the time and place of a hearing on the appeal. Upon request of the petitioners and after their waiving the time constraints provided in Mass General Law Chapter 40a, the hearing was postponed to 22 January at 7:15 p.m. Due to a scheduling conflict the hearing was rescheduled to 5 February 2009 at 7:30 p.m. in the 1st Floor Conference room, Town Hall. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on 15 and 22 January 2009 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

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Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioners: **YEUNG, MAN and SHUET, MUI**

Location of Premises: **49 HARRISON ST BRKL**

Date of Hearing: **02/05/2009**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **1st Floor Conference Room, Town Hall**

A public hearing will be held for a variance and/or special permit from:

- 1) **4.07; Table of Use Regulations;
Use #55, Special Permit Required.**
- 2) **5.91; Minimum Usable Open Space, Variance Required.**
- 3) **For the Design of All Off-Street Parking Facilities:**
 - 6.04.2. d, Variance Required.**
 - 6.04.2. f, Variance Required.**
 - 6.04.3, Special Permit Required.**
 - 6.04.4. b, Variance Required.**
 - 6.04.4. f, Special Permit Required.**
 - 6.04.5. c. 1, Variance Required.**
 - 6.04.5. c. 2, Variance Required.**
 - 6.04.5. c. 3, Variance Required**
 - 6.04.9. b, Variance Required**
- 4) **8.02.2; Alteration or Extension, Special Permit Required.**
- 5) **5.43; Exceptions to Yard and Setback Regulations; Special permit required of the**

Zoning By-Law to remove an existing garage and to construct an addition per plans at **49 HARRISON ST BRKL**.

Said Premise located in a **T-5** (Two Family and Attached Single Family) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar

at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jonathan Book, Mark Allen and Kathryn Ham. Fred Lebow of FSL Associates, 18 Shepard Street, Brighton, MA 02135 representing the petitioners presented the case before the Board.

Mr. Lebow described the property at 47-49 Harrison Street as a two-and-a-half story two-family dwelling with a detached two-car garage at the corner of Harrison and Kent Square. The property has a driveway on the lot's south side leading from Harrison Street to the two car garage. Surrounding properties include other two- and single-family dwellings and Northeastern University's athletic field. The Lawrence School is nearby to the north.

Mr. Lebow said that the petitioners, Man and Shuet Yeung, wish to demolish a portion of the existing garage and install new parking facilities with a second driveway leading from Kent Square as shown on Recommended Plan (Plan A) (sheet #B-1). The proposal has been revised from its initial design, with the latest proposal calling for a new driveway leading from Kent Square and the removal of the existing driveway leading from Harrison Street. The portion of the garage that would be removed is a small north shed addition, and the existing garage doors would be relocated to its northern façade. These doors would provide for two parking spaces inside the garage, and two side-by-side parking spaces outside of the garage. The paved area would be 18 feet wide and reach to the rear property line; the curb cut and drive would be 12 feet wide. The parking area would be paved with grass pavers, and the previous driveway would be landscaped with grass.

Mr. Lebow said that the petitioners would still like the Board of Appeals to consider the plan that retained the existing driveway and installed a new 12-foot-wide driveway from Kent Square for two new tandem parking spaces. This plan is shown as Alternate Plan (Plan B)(sheet #C-1). This proposal would

maintain a 5-foot-wide rear yard setback. In both plans, the driveway is curved to avoid a significant street tree, and a bollard would prevent damage to the tree from backing vehicles. Mr. Lebow cited several reasons why from an engineering standpoint the two-driveway proposal made more sense. Mr. Lebow said he met with the Planning Board on 14 August and 13 November, 20008, the Planning Board considered this proposal at two prior meetings. The initial proposal involved constructing a second driveway for two side-by-side parking spaces behind the two-family dwelling. Mr. Lebow said that he then revised the proposal so that one parking space would be located in a new driveway from Kent Square.

The Chairman asked whether anyone wished to speak in favor of the proposal and no-one responded. Mr. Book then asked if there was anyone present who wished to speak in opposition to the proposal. Alice McQuaid, of 6 Benjamin Drive, Nantucket, Massachusetts, representing her Aunt, Martha Driscoll Hogan, the owner of 32 Kent Square, stated that the initial application for a variance contained an attachment that referred to the possible increase in the legal occupancy of the property. The Chairman responded that the petitioners are not currently seeking that relief and the Zoning Board of Appeals is not considering increasing the level of occupancy. He explained that the petitioners have refined the relief they are seeking, over a number of meetings with Planning Board, so that the Board is only considering the curb-cut onto Kent Square and two extra spaces. Ms. McQuaid asked if the applicants are seeking additional parking spaces under this application. Mr. Book responded that the Zoning By-law allows a dwelling unit up to three parking spaces and therefore, they could have up to six spaces for a two-family dwelling, presuming that they met all other by-law requirements. Ms. McQuaid stated that Harrison Street is much wider than Kent Square and since the property was on the corner, she had safety concerns for children with cars backing out onto Kent Square. She also noted that the area is within a school zone. She also noted the change of the view from the porch at 32 Kent Square and that there has

always been a drainage problem due to the clay surface and an underground brook running under Northeastern University's field.

Lara Curtis, Senior Planner, delivered the findings of the Planning Department:

Section 4.07 – Table of Use Regulations, Use #55: Parking for more non-commercial motor vehicles owned by occupants of the lot than already permitted in Use 54, which allows up to three parking spaces per dwelling unit, requires a special permit. *The original plan indicated six parking spaces on site, but another car could be parked in the existing driveway for a total of seven parking spaces, which would require a special permit. The applicants have indicated there will be only four active parking spaces on site: two in the garage and two in the new parking area.*

Section 5.91 – Minimum Usable Open Space

The lot must have usable open space on site of at least 30 percent of the gross floor area, not including parking facilities. *The dwelling, which has 4,405 gross s.f., requires 1,321 s.f. of usable open space to comply with this section. This proposal would remove the only significant space on the lot that would qualify for usable open space, i.e. each dimension is at least 15 feet. Other space on the lot is either devoted to vehicular use or is less than 15 feet wide. The dwelling is currently non-compliant with the minimum usable open space requirements.*

Section 6.04 – Design of All Off-Street Parking Facilities

- .2.d – minimum width of aisles providing access to stalls for two-way traffic shall be 20 feet
- .2.f – parking lots shall not be designed to require cars to back into a public way in order to leave the lot
- .3 – parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle, unless the Board of Appeals by special permit modifies this requirement and the dimensional requirements of paragraph 2 where a parking facility is under full-time attendant supervision
- .4.b – entrance and exit drives shall be a minimum of 20 feet wide for two-way use
- .4.f – entrance and exit drives shall be designed to insure maximum pedestrian and vehicular safety
- .5.c.1 – front yard setback
- .5.c.2 – side setback in the front and side yards
- .5.c.3 – side and rear setback in the rear yard
- .9.b – driveways shall be graded, surfaced and drained to the satisfaction of the Building Commissioner

NEW PARKING AREA	Required	Proposed	Finding
Front Yard Setback (parking)	15 feet	15 feet (est.)	Complies*
Side/Rear Yard Setback (parking)	5 feet	0 feet	Special Permit/Var.**

* This setback is only in compliance as shown in the latest parking plan (marked by the Planning Department as "Recommended Plan (Plan A)"). If vehicles are parked in a tandem fashion as shown in "Alternate Plan (Plan B)," the proposal does not meet front yard setback requirements.

Under **Section 5.43, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or extend a non-conforming condition.

Ms. Curtis said that the Planning Board was not opposed to the latest revised proposal (i.e., Recommended Plan (Plan A)(sheet #B-1)) to install additional parking facilities, involving removing the existing curb cut and driveway and installing a new curb cut and parking area accessed from Kent Square. This revised plan ensures the lot has only one curb cut and driveway, and it will allow for a significant amount of green space where the previous driveway was located, although the lot will still not meet the requirements for usable open space due to the area's width. Additionally, using grass pavers will help beautify the parking area. Overall, the plan's design has improved. However, the Planning Board would like to ensure the parking area is screened with fencing along the rear property line to lessen the impact on the nearest abutter, and a bollard or other structure should be installed to protect the Kent Square street tree from vehicles. All of these details, as well as information regarding the parking area dimensions and design, should be shown on the parking plan. Additionally, the rest of the site should be attractively landscaped to compensate for the lack of usable open space on site. A landscaping plan indicating improvements, including new landscaping in the lot's two front yards, should be submitted prior to issuance of a building permit for the parking area. Therefore, she said, the Planning Board recommended approval of the proposal and submitted site plan, entitled "Proposed Parking Plan," prepared by FSL Associates and last dated 1/9/08, subtitled Recommended Plan (Plan A) (sheet #B-1) subject to the following conditions:

- 1. Prior to the issuance of a building permit, a revised site and parking layout plan, indicating new grass in the previous driveway extending to Harrison Street, the removal of the shed garage addition and the Harrison Street curb cut, the reorientation of the garage doors, dimensions of all paved areas, the location of the parking spaces, and fencing along the property line nearest the parking area, shall be submitted to the Assistant Director of Regulatory Planning.**

2. Prior to issuance of a building permit, a final landscaping plan, indicating screening and fencing for the proposed parking facilities, and landscaping in the property's two front yards, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. No vehicle shall be parked in the property's front yard setback or parked where it overhangs the sidewalk.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He stated that the Building Department initially cited the petitioners for a large number of parking issues because the petitioners had the potential for a number of iterations and the Building Department wanted to ensure that they covered them all. Mr. Shepard noted that most of the citations no longer apply since there have been significant changes in the proposal. Mr. Shepard stated that he thought it was a creative approach to use the "green" pavers and he also noted that the curb-cut off of Kent Square was farther from the corner than the existing curb-cut on Harrison Street, thereby, making it safer. Mr. Shepard noted that vehicular traffic is much slower on Kent Square than on Harrison Street. He said that the Building Department is supportive of the plans that the Planning Board support (i.e., Recommended Plan (Plan A)(sheet # -1)), along with the recommended conditions.

Mr. Lebow, in rebuttal, stated that passing Alternate Plan (Plan B)(sheet #C-1) actually resolves most of the concerns the abutter from 32 Kent Square has. Mr. Lebow noted that the "green" pavers could be used on the Harrison Street side as well, if the driveway were maintained

Board Member Mark Allen opined that the original plan (i.e. Alternate Plan (Plan B)) that was submitted took a non-conforming condition and made it substantially worse. He added that he supports the Planning Board's recommendation because it shows some creative thinking from both sides. Mr.

Allen stated that he was also concerned that the recommended conditions should reflect the exact plan that is being approved by this Board.

Board Member Kathryn R. Ham stated that she was concerned about the non-compliance of open space. She also noted that the recommended fence helps mitigate the effect on the neighbor at 32 Kent Square. She said that she also supports the Planning Board's recommended plan.

Chairman Book asked for clarification on the relief the applicants are seeking. He noted that if the Board focuses on the Planning Board's Recommended Plan (Plan A), which is identified as sheet #B-1, the applicants will need a special permit for the side-yard requirements and a special permit with respect to the Minimum Usable Open Space. Chair Book asked if more useable open space would be provided with Recommended Plan (Plan A) (sheet #B-1) over what is currently located at the property. Senior Planner Lara Curtis stated that the recommended plan will provide more landscaped open space than currently exists, but not more Useable Open Space as defined under the Zoning By-law. She noted that because the Harrison Street driveway is only 14.1 feet wide it does not meet the technical requirements of the Zoning By-law which requires Useable Open Space to be at least 15 feet wide. Mr. Book inquired whether the existing Harrison Street driveway, at 14.1 feet wide, is wide enough for two cars to park. Ms. Curtis stated that it was not.

Chair Book stated that he is not at all in favor of the plan for two driveways as shown on the Alternate Plan (Plan B). Chair Book noted that he had visited the site and was concerned about the amount and the speed of the traffic on Harrison Street. He noted that four cars pulling out onto Kent Square, which is a noticeably quieter street, is far safer than having the cars pull out onto Harrison Street. Chair Book also noted that there is a noticeable lack of green space in the area, and that he is not in favor of any plan which further reduces green space. Chair Book noted that the Recommended Plan

(Plan A) adds more green space to the property. Chair Book stated that he supports the Planning Board's Recommended Plan (Plan A).

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits in accordance with Section 5.43, waiver of certain dimensional requirements, including minimum requirements for usable open space, provided that counterbalancing amenities are provided, and Section 8.02.2, alteration or extension of a pre-existing, non-conforming structure, of the Zoning By-law and makes the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief under the Plan recommended by the Planning Board and marked as Recommended Plan (Plan A), subject to the following conditions:

- 1. Prior to the issuance of a building permit, a revised site and parking layout plan, indicating new grass in the previous driveway extending to Harrison Street, the removal of the shed garage addition and the Harrison Street curb cut, the reorientation of the garage doors, dimensions of all paved areas, the location of the parking spaces, and the installation of a bollard shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating the proposed fencing to be used as screening for the proposed parking facilities, and landscaping in the property's two front yards, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

3. No vehicle shall be parked in the property's front yard setback or parked where it overhangs the sidewalk.

4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

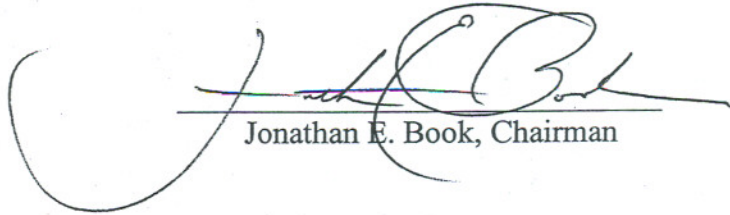
Dating Date: March 5, 2009

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

True Copy
ATTACHED:



Patrick J. Ward
Clerk, Board of Appeals


Jonathan E. Book, Chairman